

CITY OF NEWBERG CITY COUNCIL MINUTES
MAY 18, 2009
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET

Work Session was held prior to the meeting. A presentation on Golf Carts/Slow Moving Vehicles and Mass Gatherings was given. Executive Session was also held. No decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:07 PM.

II. ROLL CALL

Members

Present:	Mayor Bob Andrews	Denise Bacon	Bob Larson
	Bart Rierson	Stephen McKinney	Marc Shelton
	Wade Witherspoon		

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Barton Brierley, Planning and Building Director	Jennifer Nelson, Recording Secretary
	Howard Hamilton, Public Works Director	Crystal Kelly, Recording Secretary
	Leah Griffith, Library Director	

Others

Present: Joanne Wiitala, Andrew H. Stamp, Roger P. Grahn, John Wyland, Joseph O'Halloran

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, reported the Newberg Rotary Club will be hosting a dedication on Thursday, May 21st at 7:00 AM by the playground at Hoover Park. The council members were invited and need to RSVP.

V. PUBLIC COMMENTS

Ms. Joanne Wiitala, Newberg Animal Shelter Friends, reported the current total in the building fund is \$445,400. Another \$10K was received from the Verna Dickensheet trust, totaling \$70K so far; another installment may be received. The Plant and Rummage Sale will be held Memorial Day weekend at Zion Lutheran Church.

VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2009-2844** authorizing the City Manager to enter into an agreement with HDR Engineering, Inc. Consulting Engineers, to provide design services for the Wastewater Treatment Plant Repair, Renovation and Expansion Project.

2. Consider a motion adopting an Alcohol Use Policy and Application Form for fundraising events at the Newberg Public Library.

This item was moved from the Consent Calendar to the third item under New Business.

3. Consider a motion approving City Council Minutes for April 20, 2009.

MOTION: Larson/Rierson to approve **Resolution No. 2009-2844** and the City Council meeting minutes for April 20, 2009, as amended. (7 Yes/0 No) Motion carried.

VII. PUBLIC HEARING

1. Consider a motion approving **Ordinance No. 2009-2714** establishing a Public Safety Fee (PSF) to finance police and fire services to maintain and ensure public safety.

Time 7:13 PM

Mayor Andrews called for any conflicts of interest or abstentions. None were stated.

Mr. Terrence Mahr, City Attorney, presented the staff report (see official meeting packet for full report).

Discussions followed about including mechanisms for rate review as part of the ordinance and reporting from the Budget Committee to keep a close account of how the funds collected will be spent.

Mayor Andrews opened and closed public testimony. No citizens appeared to testify.

Mr. Mahr recommended adopting the ordinance and felt it was in good legal standing. He clarified the approval would establish a process for the Public Safety Fee, not the fee itself.

MOTION: Rierson/Larson to approve **Ordinance No. 2009-2714** establishing a process for establishing a Public Safety Fee to finance police and fire services to maintain and ensure public safety, read by title only.

Councilor Marc Shelton suggested adding language establishing a process. Staff replied this was contained within the title, but it could be made clearer.

Councilor Bart Rierson expressed his support for the ordinance based on the results of the public outreach efforts, which showed more civic groups supporting the fee than opposing it.

Councilor Wade Witherspoon stated he was in favor of the ordinance.

Councilor Stephen McKinney stated he was in favor of the ordinance because it covers a broader spectrum of the community receiving the public safety services than relying on taxation methods.

Councilor Shelton asked about the role of the Citizen Rate Review Committee (CRRC) and if that would be determined within the order rather than this ordinance. Staff replied it would be determined as a part of the order.

Mr. Mahr read the title of the ordinance including the requested changes to state this was “establishing a process to establish a specific fee by establishing a public safety fee to finance police and fire services setting out a process to determine the amount and citizens to pay the fee and setting a criteria that should be addressed during

the process and authorizing collection of the fee through utility billing mechanism of the city in addition to chapter 36 of finance and revenue and taxation to include the provision of the ordinance.”

VOTE: To approve **Ordinance No. 2009-2714** with clarifications to establishing a process. (7 Ye/0 No) Motion Carried.

2. Consider a motion approving **Ordinance No. 2009-2715** permitting the use of golf carts on designated city highways, delegating the authority to the Traffic Safety Commission to specify the areas, as well as establish additional rules and provide for appropriate signage.

TIME – 7:30 PM

Mayor Andrews called for any conflicts of interest or abstentions. None were stated.

Mr. Mahr presented the staff report (see official record for full report).

Councilor Witherspoon asked if something should be placed in the ordinance requesting the Traffic Safety Commission (TSC) to give reports to the Council before making any decisions.

Mr. Mahr stated the ordinance can give the TSC the authority within section 5 if that is desired.

Mayor Andrews opened and closed public testimony. No citizens appeared to testify. Staff recommended approval of the ordinance with the addition of requiring the TSC to report to the Council on what roads and conditions will be allowed prior to implementation of the ordinance.

MOTION: Larson/Shelton to approve **Ordinance No. 2009-2715** permitting the use of golf carts on designated city highways, delegating the authority to the Traffic Safety Commission to specify the areas, as well as establish additional rules and provide for appropriate signage with reports back to the Council prior to implementation, read by title only.

Councilor Rierson supported the ordinance stating that other communities have done the same to be more community friendly. His concerns for public safety are addressed by having it go before the TSC first and reported back with their considerations.

Mr. Mahr read the title with the addition of a section 5 under traffic rules that the TSC shall report the draft decision of which city streets prior to the implementation of the decision.

VOTE: To approve **Ordinance No. 2009-2715** including changes to section 5. (7 Yes/0 No) Motion carried.

3. Consider a motion approving **Ordinance No. 2009-2716** allowing additional extensions for expiring developments.

TIME – 7:42 PM

Mayor Andrews called for any conflicts of interest or abstentions. None were stated.

Mr. Barton Brierley, Planning and Building Director, presented the staff report (see official meeting packet for full report).

Mayor Andrews opened the public testimony.

Mr. Andrew H. Stamp, Attorney representing Mr. Roger Grahn, gave some background on the delays for the Ian's Addition Subdivision and stated he was available to answer questions.

Councilor Shelton asked about an issue with the stream corridor.

Mr. Stamp explained they got a nation wide permit and they are now shovel ready.

Mr. Roger Grahn added some further background information and spoke of vested interests.

Mr. John Wyland, JT Smith Companies, thanked staff for the proposal and the additional one year extension but he expressed some concerns for the sunset clause to December 2010 not benefiting Crestview Crossing as well. He suggested consideration of extending that date to be beneficial to other developments during these economic times.

Mayor Andrews closed the public testimony. Staff recommended adopting the ordinance.

Discussions followed about the extension of the sunset date and how council can follow up on this in the future. Staff stated he did not have a strong opinion either way, but recommended not extending the date too far in the future. Specific properties, such as Lavender Hollow and Crestview Crossing, were mentioned for consideration.

Mayor Andrews closed the public hearing.

MOTION: Larson/McKinney to approve **Ordinance No. 2009-2716** allowing additional extensions for expiring developments, read by title only.

MOTION: Rierson/Witherspoon to amend **Ordinance No. 2009-2716** to add language presented in a letter from JT Smith Companies to extend beyond the December 31, 2010, sunset date to December 31, 2011. (6 Yes/1 No [Larson]) Motion carried.

VOTE: To approve **Ordinance No. 2009-2716** as amended. (7 Yes/0 No) Motion carried.

VIII. NEW BUSINESS

1. Consider a motion denying **Resolution No. 2009-2845** granting water hardship request for Joseph O'Halloran on property located at 23355 NE Old Yamhill Road.

TIME – 8:10 PM

Mr. Howard Hamilton, Public Works Director, presented the staff report (see official meeting packet for full report).

Councilor Rierson referred to Exhibit A, which is the map asking if there is a potential for the property owner to install a water tank and pump system. He asked what the cost would be and what it would look like. Staff explained how it would work but did not have cost estimates researched. Councilor Rierson asked about staff reservations to extending water outside of the city when the consumer would be paying at a higher rate. Staff said it was an effort to avoid promoting development outside the city for those that have another water resource; there is also an elevation component to consider which can reduce the water supply to others connected to the spring's system.

Councilor Denise Bacon asked how many more customers the springs can support. Staff replied that is hard to say because it is dependent on the volume of water in the springs; which fluctuates.

Councilor Shelton asked about the water rights attached to the property. Staff spoke of the water rights being divided in the past into a ½ water right; no one knows exactly what a ½ water right is.

Discussions continued about the criterion for a water hardship and why staff felt it was not met; the property cannot be annexed, there is no existing structure, and an alternative water resource may potentially exist, which staff feels needs to be explored. The structure was removed with permission from the County. Councilors were concerned what would happen if the owner was denied hooking up to the water system and other alternatives did not work; staff discussed Yamhill County's disclaimer that water is not guaranteed and stated they would still recommend denial based on the criteria. A riparian water system and the condition of the springs's connection were discussed as well.

Mayor Andrews opened public testimony.

Mr. Joseph O'Halloran gave some background on the purchase of the property and the condition of the County to remove any unsafe structure as part of his approved building permit. He did have concerns about the removal of the dwelling affecting his building permit and he would not have removed it had he known it would be a factor. His desire is to market the property, which has created a hardship for him in his attempt to provide water to the property without burdening the City. He explained the different attempts to drill wells unsuccessfully and the unwillingness of prospective buyers to purchase a home with a three gallon per minute water supply which would come from the suggested holding tank/reservoir alternative that he already attempted. He discussed the uselessness of the ½ water right so far with no connections available and his willingness to place a holding tank on the property to alleviate the burden to the City system.

Mr. Hamilton recommended denial of the water hardship request.

Councilor Rierson stated he was undecided, but he will not be considering the factor that the dwelling no longer exists because this came from the County to remove it.

Councilor Larson argued that other instances of water hardship have been granted because the property was fairly close to the city limit and not other wells or water connections existed. He said he could not agree to grant this hardship with it being so far out with other water available; he supported staff's recommendation to deny.

Councilor Shelton pointed out this would require new findings to support it since the current findings support denial. Staff replied new findings of fact can be requested within the motion as additional conditions in section D to show the reasons why the exception was granted.

MOTION: Shelton/Larson to deny Resolution No. 2009-2845 granting water hardship request for Joseph O'Halloran on property located at 23355 NE Old Yamhill Road.

Councilor Shelton argued this is not just a hardship for this person but the system as well. He is also not concerned with the structure removal, but he is concerned with the proximity to the city and not making annexation an option. He would deny the hardship based on the criteria of being unable to annex.

Councilor McKinney said he was in favor of the request of hardship and spoke of the City bearing the weight of the riparian wells.

Councilor Bacon was also torn because she did not want to create a tax burden on Newberg citizens with the springs, but she did want to be able to grant the hardship.

Councilor Witherspoon said he felt the request met the exceptions due to hardships. The first exception pertained to the existing structure, which he does not feel applies here. The second states that annexation cannot be immediately feasible and this property cannot be annexed. He believes a hardship does exist based on the quantity of water available and that the owner has proven all other alternatives to be investigated. Although the property is not in close proximity to the city and it was told it would not overburden the spring's water line. The water is for domestic use only and the owner will pay for the easement of the burden on the system. Based on the criteria he does not feel he can deny the request for hardship.

Councilor Shelton changed his mind and stated he agreed the findings for hardship were appropriate and felt the recommendation was wrong. He felt the criteria have been met based on testimony received.

VOTE: To deny **Resolution No. 2009-2845**. (1 Yes [Larson]/6 No) Motion denied.

MOTION: **Rierson/Shelton** to approve **Resolution No. 2009-2845** granting water hardship request for Joseph O'Halloran on property located at 23355 NE Old Yamhill Road and modifying the findings of fact to not accept the non-existing structure referring to the letter from the County.

Councilor Larson said he is against this motion and preferred staff to come back with research on the findings. He did not want to approve it without the details worked on.

Mr. Mahr suggested amending A1 of the findings because the lot is currently vacant but has the right to be built pursuant to a County building permit. Under B2 lenders would not lend on the building due to the reservoir water supply and additional wells drilled were insufficient. These findings make approval appropriate and the resolution will be changed to read that the City Council grants the request.

MOTION: **McKinney/Rierson** to amend **Resolution No. 2009-2845** to grant the water hardship as stated and read by the City Attorney above. (6 Yes/1 No [Larson]) Motion carried.

VOTE: To approve **Resolution No. 2009-2845** as amended. (6 Yes/1 No [Larson]) Motion carried.

2. Report on the South Industrial Plan.

TIME – 9:39 PM

Mr. Brierley presented the staff report and answered a few questions from Council (see official meeting for full report).

3. Consider a motion adopting an Alcohol Use Policy and Application Form for fundraising events at the Newberg Public Library.

TIME – 10:05 PM

Ms. Leah Griffith, Library Director, presented the staff report (see official meeting packet for full report).

Councilor Larson asked for clarification on whether the events would ever be in the library itself and opposed to serving alcohol in a place where kids go and may be present. Staff stated the library building was included, but the events would be held after hours and children would not be present.

Councilor Rierson asked why it was limited to just the library and not any other City buildings. Staff did not foresee holding an event like this anywhere other than the library, but there would be nothing wrong with broadening the scope.

Councilor Bacon asked why it was limited to only wine, especially with the growing interest in locally brewed beers. Staff said so far only local wineries have requested participation in events, but felt comfortable coming back to Council to include this if the need arises

Discussions followed on the amount of people attending the events, the presence of licensed servers, and the facilitation to not have to come before Council for every requested event of this type.

Councilor McKinney suggested requiring proof of insurance with the application. Staff reassured that the one week time period before was sufficient and stated difficulties of obtaining insurance before a venue is secured.

MOTION: Rierson/Bacon to adopt an Alcohol Use Policy and Application Form for fundraising events at the Newberg Public Library. (5 Yes/2 No [Larson, McKinney]) Motion carried.

IX. COUNCIL BUSINESS

TIME – 10:25 PM

Councilor Rierson provided an animal shelter update, specifically on the progress of property acquisition.

Mr. Danicic stated after looking into the Harris Thermal request for a \$4,000.00 credit on permit fees; staff would not recommend granting the request because of several granted deferrals on the half street improvement over some ten years.

Mr. Mahr discussed an appeal from the Land Use Board of Appeals (LUBA) regarding the McClure annexation and will be researching whether or not Council should take any further action and will return with a report.

X. EXECUTIVE SESSION

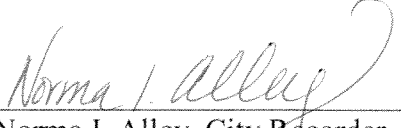
Executive Session pursuant to ORS 192.660(2)(d) relating to labor negotiations – Police Union.

The Executive Session was held during the Work Session.


XI. ADJOURNMENT

The meeting adjourned at 10:57 PM.

ADOPTED by the Newberg City Council this 6th day of June, 2009.


Norma I. Alley, City Recorder

ATTEST by the Mayor this 9th day of June, 2009.


Bob Andrews, Mayor